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# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOUTHWEST REGIONAL OFFICE

L. Preston Bryant, Jr.  
Secretary of Natural Resources

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David K. Paylor  
Director

Michael D. Overstreet  
Regional Director

## STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Oldcastle Stone Products Registration No. 10385

### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301 and 10.1 – 1184, between the State Air Pollution Control Board and Oldcastle Stone Products for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Oldcastle Stone Products a stone quarry, crushing, screening and lime pellet bagging operation located off Rt. 58 in Castlewood, three miles east of St. Paul, in Russell County, Virginia.

**SECTION C: Findings of Facts and Conclusions of Law**

1. Oldcastle Stone Products owns and operates a stone quarry, crushing, screening and lime pellet bagging operation located off Rt. 58 in Castlewood in Russell County, Virginia.
2. Oldcastle Stone Products was issued a permit to construct and operate a Form Fill and Seal Bagging Station and associated conveyor for lime pellets at their stone crushing plant (Registration # 10385) on October 19, 2005.
3. Permit Condition 26 - Visible Emission Evaluation – Visible Emissions Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by permittee on the Form Fill and Seal Bagging Station and associated conveyor. Each test shall consist of 30 sets of 24 consecutive observations (at 15 second intervals) to yield a six minute average. The details of the tests are to be arranged with the Director, Southwest Regional Office. The evaluation shall be performed and reported within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. Two copies of the test results shall be submitted to the Director, Southwest Regional Office within 45 days after test completion and shall conform to the test report format enclosed with this permit. The visible emission calculation may be reduced to ten (10) sets of twenty-four (24) consecutive observations (at fifteen (15) second intervals) to yield a six (6) minute average if :
  - a.) There are no individual readings greater than ten (10) percent opacity, and
  - b.) There are no more than three (3) readings of ten (10) percent opacity for the one (1) hour period.
4. On December 21, 2005 the DEQ received a letter dated December 19, 2005 from Oldcastle stating that the Form Fill and Seal Bagging Station was now running at full production.
5. On January 30, 2006 the DEQ received the required Method 9 VEE, on the Form Fill and Seal Bagging Station and associated conveyor, from Oldcastle. From the VEE diagrams it was determined that the sun was not in the correct position.
6. On March 16, 2006 an Informal Correction Letter was issued to Oldcastle requiring VEE retesting within 30 days.
7. On February 28, 2006 Oldcastle performed a second VEE. After review by DEQ it was determined that: (1) The second VEE was only done for 30 minutes, not the required one hour. (2) VEE testing was not performed on the associated conveyor and (3) The source did not meet the 60 day time frame for conducting VEEs following reaching maximum production (12-19-05).
8. On April 28, 2006 a Notice of Violation (Nov No. 4-2-06) for a permit violation, by Certified Mail-Return Receipt Requested, was issued to Oldcastle informing them that DEQ had reason to believe that a violation of Air Pollution Law and Regulations; 9 VAC 5-170-160A, 9 VAC 5-50-30 and 9 VAC 5-50-410, had occurred.

9. On May 4 and May 10, 2006 Oldcastle did additional Method 9 VEEs. On May 11, 2006 DEQ determined that the VEE testing as required in Permit Condition number 26 had been completed and in compliance.
10. On June 29, 2006 Oldcastle representatives Jerry McArthur, Rick Rose and Lawrence Helbert met with DEQ personnel Crystal Bazyk and Don Hilt to discuss the NOV and review the Consent Order. Oldcastle representatives stated that the conveyor in question was completely enclosed and they were unsure where to read the opacity.
11. On June 29, 2006 Oldcastle submitted photos of the conveyor showing the enclosure for our review.
12. On July 10, 2006 DEQ Inspector Don Hilt performed an inspection and observed that the belt was enclosed and had a baghouse pick up point at the belt discharge.
13. On July 18, 2006 Air Compliance Manager Crystal Bazyk submitted a Memo to the File (#10385) stating that since the associated conveyor was completely enclosed, with baghouse pick up point at the belt discharge, the baghouse was the most appropriate point to read opacity for the Form Fill and Seal Bagging Station and associated conveyor. For the Civil Charge calculation only one emission point will be addressed.
14. The following regulations are applicable to this permitted source : 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.  
Other applicable regulations include : 9 VAC 5-50-30 – (Performance testing).  
9 VAC 5-50-410 - (Designated standards of performance).

#### SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders Oldcastle Stone Products and Oldcastle and Oldcastle Stone Products agrees to pay a civil charge of \$2422.00 within 30 days of the effective date of this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

For purposes of properly identifying its payment, Oldcastle shall include with the check, a notification of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

2. The Company has since submitted the required Method 9 VEE testing. The information has been reviewed and it is determined that the results are considered valid and in compliance.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Oldcastle Stone Products for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Virginia Stationary Source Permit to Operate dated October 19, 2005.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Oldcastle Stone Products as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this order, Oldcastle Stone Products admits the jurisdictional allegations, factual findings, or conclusions of law contained herein.
5. Oldcastle Stone Products consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Oldcastle Stone Products declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 *et seq.*, and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Oldcastle Stone Products to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

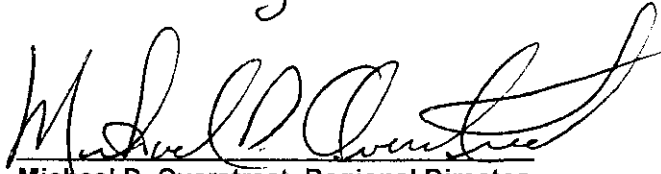
9. Oldcastle Stone Products shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Oldcastle Stone Products must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Oldcastle Stone Products shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
- a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Oldcastle Stone Products. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to Oldcastle Stone Products. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Oldcastle Stone Products from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

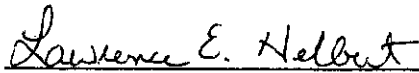
13. By its signature below, Oldcastle Stone Products voluntarily agrees to the issuance of this Order.

And it is ORDERED this day of 7<sup>th</sup> August, 2006



Michael D. Overstreet, Regional Director  
Department of Environmental Quality

Oldcastle Stone Products voluntarily agrees to the issuance of this Order.



Lawrence E. Helbert  
Environmental Health & Safety  
Oldcastle Stone Products

Date: 8-4-06

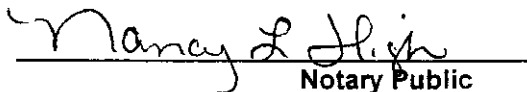
Commonwealth of Virginia

City/County of Russell

The foregoing document was signed and acknowledged before me this 4<sup>th</sup> day of

August, 2006 by Lawrence Helbert on behalf of  
Oldcastle Stone Products

Date: 8-4-06

  
Notary Public

My commission expires: 12-31-08